

DAVID BERRY, 8-29-07

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1 IN THE UNITED STATES DISTRICT COURT FOR THE
2 NORTHERN DISTRICT OF OKLAHOMA

3
4 W. A. DREW EDMONDSON, in his)
capacity as ATTORNEY GENERAL)
5 OF THE STATE OF OKLAHOMA and)
OKLAHOMA SECRETARY OF THE)
6 ENVIRONMENT C. MILES TOLBERT,)
in his capacity as the)
7 TRUSTEE FOR NATURAL RESOURCES)
FOR THE STATE OF OKLAHOMA,)

8)
Plaintiff,)

9)
vs.)

10)
TYSON FOODS, INC., et al,)

11)
Defendants.)

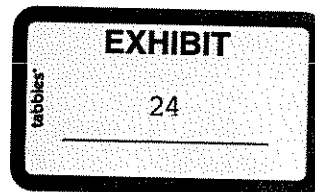
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15 THE VIDEO DEPOSITION OF DAVID BERRY,
16 produced as a witness on behalf of the Defendants, in
17 the above styled and numbered cause, taken on the 29th
18 day of August, 2007, in the City of Tulsa, County of
19 Tulsa, State of Oklahoma, before me, Marlene Percefull,
20 Certified Shorthand Reporter, duly certified under and
21 by virtue of the laws of the State of Oklahoma.

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) No. 4:05-CV-00329-TCK-SAJ

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1 A I don't believe I'm getting this initial letter. 10:41AM

2 Q Do you have any idea when you stopped receiving
3 copies of an initial letter that goes out to the
4 complainant?

5 A No. 10:41AM

6 Q And do you have any idea why that might have
7 stopped, that practice?

8 A No.

9 Q When you're copied on a letter from Mr. Parrish
10 regarding a complaint, whether it's before a complaint 10:42AM
11 or after a complaint, do you keep those?

12 A No, I don't.

13 Q What do you do with those?

14 A I throw them in the trash.

15 Q Did you keep them for any period of time? 10:42AM

16 A No.

17 Q Before throwing them away?

18 A No.

19 Q Do you keep the e-mails or faxes where you're
20 initially assigned a complaint? 10:42AM

21 A No.

22 Q What do you do with those?

23 A They're -- I don't keep them on my computer and
24 once I e-mail it to Dan, the office has my report so I
25 have no need for it. 10:42AM

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1 Q When you get an e-mail assigning you a complaint, 10:42AM
2 do you ever reply to that e-mail?

3 A There's no need to. Once it's to me, I check on
4 it to get to that part that you showed me a minute ago,
5 Exhibit 3, I believe. 10:43AM

6 Q Right.

7 A Once I get it opened up to there, I print it off
8 and then I just delete it off my computer.

9 Q Did you keep printouts?

10 A I keep the printouts until I've investigated my 10:43AM
11 complaint and then once the complaint has been closed
12 then I, you know, I don't need it no more.

13 Q Did you ever reply to the e-mail just to say I got
14 the e-mail and I'm working on it or anything like that?

15 A No, no. 10:43AM

16 Q Do you maintain any documents that relate to your
17 position with the Oklahoma Department of Agriculture on
18 your computer?

19 A No. The only document I keep is the inspection
20 sheet that I do each year on the farm. That's all I 10:43AM
21 keep.

22 Q Has anybody asked you to search through your desk
23 or your e-mails or your computer or anything to make
24 sure you don't have any records that relate to growers
25 or complaints? 10:44AM

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10:44AM

1 A No.

2 MS. WEAVER: Object to form.

3 A No.

4 Q Did you understand my question?

5 A That somebody has asked to look through my 10:44AM
6 records.7 Q Has anybody asked you to look through your
8 records?

9 A No.

10 Q Have you provided any documents to anyone as a 10:44AM
11 part of this case?

12 MS. WEAVER: Object to form.

13 A Provided any documents?

14 Q Have you provided documents to any lawyers or to
15 Mr. Parrish or anyone else? 10:44AM

16 A No.

17 Q Relating to this lawsuit?

18 A No.

19 MS. WEAVER: Same objection.

20 Q Did you understand my question? 10:44AM

21 A Have I provided documents or paperwork to somebody
22 else providing what I do, I guess what I'm here for
23 today? I haven't, other than my daily routine of, you
24 know, if I got a complaint, I mean, I haven't sent
25 nobody nothing. 10:44AM

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1 copies of the inspection checklist, is that accurate? 3:53PM

2 A That three-page inspection.

3 Q And not --

4 A I've the three -- not the three-page inspection,
5 the three-page registration and then a copy of their 3:53PM
6 inspection sheet.

7 Q And you don't keep any of your notes with regard
8 to --

9 A No.

10 Q -- complaints? 3:53PM

11 A No, no. I've never felt no need in it.

12 Q No steno pad?

13 A If I had known I was going to be here today, I
14 might have kept a lot of notes, but I've always just
15 threw everything away. Once I get it wrote and sent to 3:53PM
16 Dan, I mean, it's in the office and I know they're
17 keeping a copy or probably, so.

18 Q And to date, no one has directed you from ODAFF or
19 any of the attorneys that are representing the State in
20 this case have directed you not to throw away any of 3:53PM
21 your notes on complaints or on poultry growing
22 operations?

23 A No.

24 Q Okay. And no one has directed you not to delete
25 any e-mails you might receive from Dan Parrish or 3:54PM
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3:54PM

1 anyone else from ODAFF?

2 A I've never got an e-mail from Dan.

3 Q Or no one has directed you to not delete any

4 e-mails that you might send to Dan or --

5 A No.

3:54PM

6 Q -- to any other individual in ODAFF?

7 A No.

8 Q Okay. Have you ever inspected a nursery in the

9 Illinois River watershed?

10 A Like a --

3:54PM

11 Q Plant nursery?

12 A No, ma'am.

13 MS. LONGWELL: This is where it gets real

14 sporadic because I'm just bouncing back and forth.

15 Why don't I do this, I'll reserve any last questions

3:55PM

16 I have for the very end and let the other attorneys

17 in the room ask their questions.

18 MS. HILL: I've got a few. Do you have an

19 exhibit sticker?

20 CROSS EXAMINATION

3:55PM

21 BY MS. HILL:

22 Q Mr. Berry, my name is Theresa Hill. I represent

23 Cargill in this litigation.

24 A Yes, ma'am.

25 Q And just to follow up on Nicole's questions

3:55PM

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1	concerning records?	Page 231 3:55 PM
2	A Yes, ma'am.	
3	Q You referred to a map earlier that you used to use	
4	that had the smaller watershed numbers?	
5	A Mm-hmm.	3:55 PM
6	Q Do you still have that map?	
7	A I'm sure I do.	
8	Q Okay. And that would be in your files at home?	
9	A It would be in my briefcase.	
10	Q Okay. Do you have any other maps that you refer	3:55 PM
11	to?	
12	A My watershed maps that help me locate my	
13	facilities since we GPS'd the facility entranceways,	
14	they was able to give me a map that I can look at to	
15	determine where the facility is at in what watershed.	3:56 PM
16	Q So the maps that you have now have the GPS	
17	readings of the facilities that you inspect?	
18	A Yes.	
19	Q And you keep those in your briefcase?	
20	A Yes.	3:56 PM
21	Q What else do you keep in your briefcase relating	
22	to your poultry inspection operations?	
23	A Just my record book, you know, my inspection book	
24	that I have to work, you know, that I fill out and then	
25	my maps.	3:56 PM

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1 Q And what's the inspection book that you have?

3:56PM

2 A Well, it's the three-page inspection, annual
3 inspections I do. It's that book.

4 Q What exhibit number are we on?

5 MS. LONGWELL: Twenty.

3:56PM

6 Q This is 20. Mr. Berry, do you know a poultry
7 grower named Bob Schwabe?

8 A Yes, ma'am.

9 Q And can you identify Exhibit 20 that I'm handing
10 to you here, what this is?

3:57PM

11 A It's my inspection from December 18th of 2002.

12 Q Okay. And this is an inspection checklist that
13 you filled out for Mr. Schwabe?

14 A Yes, ma'am.

15 Q And Mr. Schwabe grows turkeys for Cargill, is that
16 correct?

3:57PM

17 A Yes, he does.

18 Q And on Page 2 and 3 of this exhibit, are those
19 records that you filled out or are those things you
20 obtained from Mr. Schwabe?

3:57PM

21 A These are the records that -- because he was -- he
22 was spreading so much litter that the space they gave
23 me on my inspection sheet wouldn't allow me the write
24 it all down so I used a piece of paper to write it on
25 and attached it.

3:57PM